

### REMARKS/ARGUMENTS

Claims 12-23 and 16-29 are active. Claims 30 and 31 have been withdrawn from consideration. Independent claim 12 has been revised to include the 95% homology described by claim 17, which was not rejected as lacking adequate written description. Support for this degree of homology as well as for those in claims 16 and 17, is found on page 14 of the specification. Claim 12 has also been revised to remove the hybridization language in part (b) for simplicity. No new matter is believed to have been introduced.

The Applicants respectfully request that this after-final Amendment be entered by the Examiner to place this application in condition for allowance or in better condition for appeal. The proposed amendments do not raise new issues or necessitate a new search by the Examiner, since the amendment is based on elements earlier claimed or inherent in the previously examined claims. Entry of this Amendment would also permit the Applicants to respond to the arguments raised in the final rejection.

The Applicants thank Examiner Desai for the helpful discussion on February 11, 2009. It was suggested that the preamble of claim 1 refer to the requirement that the polypeptide not contain the Gly Ile Ile sequence which appears in the wherein clause; and that claim 1 be directed to polynucleotides having at least 95% homology to SEQ ID NOS: 1 or 3. The Examiner agreed to reconsider the prior art rejection in view of this limitation.

### Restriction/Lack of Unity/Election

The Applicants previously elected with traverse **Group I**, claims 1, 3-5, 8, 10 and 11, directed to nucleic acids, vectors, microorganisms, and methods for making polypeptides, and the species **SEQ ID NO: 1**. The requirement has been made FINAL. The Applicants respectfully request that the claims directed to nonelected subject matter which depend from or otherwise include all the limitations of an allowed elected claim, be rejoined upon an

indication of allowability for the elected claim, see MPEP 821.04. Specifically, withdrawn claims 30 and 31 depend from claim 29. Therefore, their rejoinder and allowance is respectfully requested upon an indication of allowability for claim 29.

Rejection—35 U.S.C. §112, first paragraph

Claims 12, 16, 18-20 and 22-27 and 29-30 were rejected under 35 U.S.C. 112, first paragraph, as lacking adequate descriptive support in the specification with respect to sequences 70% homologous to SEQ ID NO: 1 or 3. This rejection is moot in view of the incorporation into independent claim 12 of the limitation to “at least 95% homology” from claim 17, which was not rejected.

Rejection—35 U.S.C. §102(e)

Claims 12, 14-18, 20, 25 and 29 were rejected under 35 U.S.C. 102(e) as being anticipated by Nakagawa, et al., U.S. 2002/0197605 A1. As discussed with Examiner Desai, independent claim 12 requires that the claimed polynucleotide sequences do not encode a protein containing Gly Ile Ile corresponding to residues 20-22 of SEQ ID NO: 2, a sequence which the polynucleotide of Nakagawa encodes. As suggested by the Examiner, the preamble of claim 12 has been revised to emphasize this difference. Therefore, the present claims clearly exclude the prior art sequence and cannot be anticipated.

This rejection would not apply to independent claim 12 or claims depending from claim 12, since Nakagawa does not disclose a polynucleotide which “does not encode a protein comprising the sequence Gly Ile Ile at the positions corresponding to residues 20-22 of SEQ ID NO: 2”—see nucleotides 55-66 of the Nakagawa sequence reproduced at the bottom of page 7--top of page 8 of the Official Action:

Nakagawa = Qy =     GAC   GGA   ATC   ATT

Asp Gly Ile Ile.

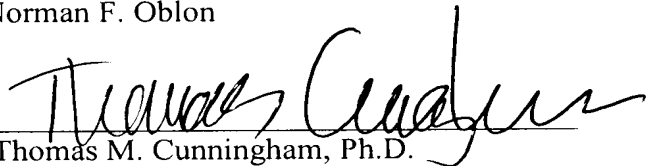
While the Nakagawa sequence may have 96.9% identity to SEQ ID NO: 1 and may hybridize at high stringency with SEQ ID NO: 1, it does not meet the limitation in claim 1 that it “does not encode a protein comprising the sequence **Gly Ile Ile** at the positions corresponding to residues 20-22 of SEQ ID NO: 2”. As shown above, the Nakagawa sequence encodes Asp-**Gly-Ile-Ile**. Accordingly, this rejection cannot be sustained.

Conclusion

This application presents allowable subject matter and the Examiner is respectfully requested to pass it to issue. The Examiner is kindly invited to contact the undersigned should a further discussion of the issues or claims be helpful.

Respectfully submitted,

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